

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: 1st May, 2017
Decided on: 4th May, 2017

+ **CRL.A. 1033/2015**

SANJEET

..... Appellant

Represented by: Mr. Harsh Prabhakar, Advocate
(DHLSC), Mr. Jay K. Bhardwaj
and Mr. Anirudh Tanwar,
Advocates.

versus

STATE

..... Respondent

Represented by: Mr. Ashok Kumar Garg, APP.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. Sanjeet challenges the impugned judgment dated 3rd November, 2014 convicting him for offences punishable under Section 354A/509 IPC and Section 10 of Protection of Children from Sexual Offences Act (in short 'POCSO Act') and the order on sentence dated 5th November, 2014 directing him to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹1,000/- for offence punishable under Section 10 of POCSO Act. No separate sentence was awarded for offences punishable under Sections 354A/509 IPC.

2. Assailing the conviction, Learned counsel for the appellant submits that the evidence of identification is tenuous and rendered facile by the attending circumstances. The prosecutrix categorically deposed that the lights in the train were switched off, and only night bulbs were lit at the

relevant time. Furthermore, even as per the prosecution case, the prosecutrix was sleeping when the appellant allegedly touched her. The appellant was previously unknown to her and she had not even seen him earlier. It is highly improbable that the prosecutrix would satisfactorily be able to identify an unknown person in dim light and that too when she was abruptly awakened from her sleep. Thus, the possibility of mistaken identification cannot be ruled out. There are material contradictions on the vital aspect as to when and from where the appellant was apprehended. The father of the prosecutrix in his deposition stated that they found the appellant hiding himself in the place where blankets were stored. He further deposed that he did not apprehend the appellant while he was running away. Thus, the opportunity of identification being scanty, it was apparent that the appellant was apprehended on mere suspicion and speculation sans concrete proof. While placing reliance on the decision reported as 2004 (2) Crimes 101 Lalla alias Raj Kumar Singh v. State of U.P., it is submitted that merely because there is no previous enmity for false implication cannot be a reason for the Court to place implicit reliance on evidence which is unsatisfactory.

3. Learned APP for the State on the other hand submits that the judgment of conviction and the order on sentence suffer from no illegality.

4. Process of law was set into motion on 12th June, 2013 around 5:05 A.M. on the receipt of a PCR call stating that the daughter of the caller, who was in A-1 coach, seat no. 25, 26 of Chetak Express Train and had arrived at Sarai Rohilla Railway Station, was eve teased by a boy who has been apprehended. The aforesaid information was recorded vide DD No. 4A and handed over to ASI Ved Prakash who along with PW-5 Constable Sita Ram reached the place of incident. In the meantime, PW-6 ASI Savitri Devi also

reached the spot and met the complainant who is the father of victim, the victim and her mother. A written complaint was given by the father of victim, wherein it was stated that on 12th June, 2013, he was travelling from Udaipur to Delhi Sarai Rohilla on Chetak Express Train. When the train reached near Delhi Cantt., he heard the scream of her daughter. He saw a person running and on enquiring from her daughter, she stated that that person was doing wrongful act ("*gandi harkat*") and was removing her top. That person was apprehended from the store cabin with the help of coach attendant Santosh Kumar and they made him sit next to them. In the meantime, more passengers boarded the train and came in that coach and one of them was Prabhat Kumar. That person started apologizing and stated that he will not repeat his mistake. However, the complainant made a call on 100 number and met the police officials at Sarai Rohilla Station and narrated the entire incident to them. The name of that person was disclosed as Sanjeet Suman (the appellant herein) and he was handed over to the police. On the basis of this written complaint Ex. PW-1/A, FIR No. 33/2013 was lodged under Sections 354/354A/509 IPC and Section 8 of POCSO Act at PS Sarai Rohilla Station. Subsequently, statement of the victim was recorded under Section 164 Cr.P.C. Charge sheet was filed.

5. PW-1, father of victim, deposed in sync with his written complaint given to the police. He stated that the date of birth of the victim was 7th October, 2002. During his cross examination, he admitted that only night lights were on in the train and he did not see the face of the offender. He admitted that he apprehended Sanjeet at the pointing out of Santosh.

6. PW-2 the victim on being asked if anything had happened with her in the train deposed that when she was sleeping at night, one boy came to her

and touched her abdomen by lifting her top. She had seen that boy. When he touched her abdomen, she raised alarm, consequently, her mother got up and she woke her father. She stated that the boy had ran away but her father apprehended that boy with the help of another attendant. During her cross examination, she stated that she saw the face of Sanjeet. He scared her.

7. PW-8 Santosh Kumar deposed that he was working as attendant (bed) at Chetak Express. His duty was in the AC coach. Sanjeet was deputed in AC 3 Tier and was a bed delivery boy. About two hours before reaching Delhi Sarai Rohilla, he was sleeping in the coach at his seat. In the meantime, father of victim came and took him to his daughter but she refused to identify him. At that time, Sanjeet was hiding below his seat and laying on the blanket. PW-1 pulled him out and PW-2 identified her.

8. Supreme Court in the decision reported as AIR 1992 SC 2100 State of Maharashtra Vs. Sukhdeo Singh & Anr. laid down a rule of caution that in case of total strangers, it is not safe to place implicit reliance on the evidence of witnesses who had just a fleeting glimpse of the person identified. In the decision reported as (1991) 3 SCC 434 Bollavaram Pedda Narsi Reddy & Ors. Vs. State of Andhra Pradesh the Supreme Court noted that the attack on the deceased was sudden and simultaneous and the assailant slipped away in no time. In the absence of cogent evidence that the witnesses by reason of the visibility of the light at the place of occurrence and proximity to the assailants had a clear vision of the action of each one of the accused persons in order that their features could get impressed in their minds to enable them to recollect the same and identify the assailants even after a long lapse of time, it would be hazardous to draw the inference that the accused-appellants are the real assailants.

9. As per the evidence of father of the victim he got up only after his daughter shrieked and his wife woke him up. He had not seen the boy who had teased his daughter. On suspicion he first gets Santosh Kumar who was working as an attendant (bed) in Chetak Express. When the victim did not identify him, the father of the victim and Santosh Kumar caught hold of the appellant who was lying on the blanket whom it is stated that the victim identified. Even as per the version of the victim she just had a fleeting glimpse of the accused, that too when only night bulbs were on. Moreover as noted above, the duty of Sanjeet was not in Coach A-1, 2A Tier where the victim and her family were sleeping but in AC 3 Tier. Thus, from the evidence on record, it cannot be held with conviction that the victim rightly identified Sanjeet as the person who had molested her. In the facts and circumstances of the case Sanjeet is entitled to the benefit of doubt. Consequently, the impugned judgment of conviction and order on sentence are set aside. Sanjeet be released from custody if not required in any other case.

10. Appeal is disposed of.

11. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

12. TCR be returned.

(MUKTA GUPTA)
JUDGE

MAY 04, 2017
‘ga’